

## Department of Homeland Security

## § 244.5

(i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;

(ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;

(iii) The applicant is a parolee or has a pending request for reparole; or

(iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

(3) Eligibility for late initial registration in a currently designated foreign state shall also continue until January 15, 1999, for any applicant who would have been eligible to apply previously if paragraph (f)(2) of this section as revised had been in effect before November 16, 1998.

(g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

[63 FR 63595, Nov. 16, 1998]

### § 244.3 Applicability of grounds of inadmissibility.

(a) *Grounds of inadmissibility not to be applied.* Paragraphs (4), (5) (A) and (B), and (7)(A)(i) of section 212(a) of the Act shall not render an alien ineligible for Temporary Protected Status.

(b) *Waiver of grounds of inadmissibility.* Except as provided in paragraph (c) of this section, USCIS may waive any other provision of section 212(a) of the Act in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest. If an alien is inadmissible on grounds which may be waived as set forth in this paragraph, he or she shall be advised of the procedures for applying for a waiver.

(c) *Grounds of inadmissibility that may not be waived.* USCIS may not waive the following provisions of section 212(a) of the Act:

(1) Paragraphs (2)(A)(i), (2)(B), and (2)(C) (relating to criminals and drug offenses);

(2) Paragraphs (3)(A), (3)(B), (3)(C), and (3)(D) (relating to national security); or

(3) Paragraph (3)(E) (relating to those who assisted in the Nazi persecution).

[56 FR 619, Jan. 7, 1991, as amended at 58 FR 58937, Nov. 5, 1993. Redesignated at 62 FR 10367, 10382, Mar. 6, 1997; 76 FR 53791, Aug. 29, 2011]

### § 244.4 Ineligible aliens.

An alien is ineligible for Temporary Protected Status if the alien:

(a) Has been convicted of any felony or two or more misdemeanors, as defined in § 244.1, committed in the United States, or

(b) Is an alien described in section 208(b)(2)(A) of the Act.

[56 FR 619, Jan. 7, 1991, as amended at 56 FR 23497, May 22, 1991. Redesignated at 62 FR 10367, 10382, Mar. 6, 1997, as amended at 63 FR 63596, Nov. 16, 1998; 76 FR 53791, Aug. 29, 2011]

### § 244.5 Temporary treatment benefits for eligible aliens.

(a) *Prior to the registration period.* Prior to the registration period established by DHS, a national of a foreign state designated by DHS shall be afforded temporary treatment benefits upon the filing, after the effective date of such designation, of a completed application for Temporary Protected Status which establishes the alien's *prima facie* eligibility for benefits under section 244 of the Act. This application may be filed without fee. Temporary treatment benefits, if granted, shall terminate unless the registration fee is paid or a waiver is sought within the first thirty days of the registration period designated by DHS. If the registration fee is paid or a waiver is sought within such thirty day period, temporary treatment benefits shall continue until terminated under § 244.13. The denial of temporary treatment benefits prior to the registration period designated by DHS shall be without prejudice to the filing of an application for Temporary Protected Status during such registration period.

(b) *During the registration period.* Upon the filing of an application for Temporary Protected Status, the alien shall be afforded temporary treatment benefits, if the application establishes the alien's *prima facie* eligibility for Temporary Protected Status. Such temporary treatment benefits shall

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continue until terminated under § 244.13.

(c) *Denied benefits.* There shall be no appeal from the denial of temporary treatment benefits.

[56 FR 619, May 22, 1991, as amended at 56 FR 23497, May 22, 1991. Redesignated at 62 FR 10367, 10382, Mar. 6, 1997, as amended at 63 FR 63596, Nov. 16, 1998; 76 FR 53791, Aug. 29, 2011]

## § 244.6 Application.

(a) An application for Temporary Protected Status must be submitted in accordance with the form instructions, the applicable country-specific FEDERAL REGISTER notice that announces the procedures for TPS registration or re-registration, and 8 CFR 103.2, except as otherwise provided in this section, with the appropriate fees and biometric information as described in 8 CFR 103.7(b)(1), 103.16, and 103.17.

(b) An applicant for TPS may also request employment authorization pursuant to 8 CFR 274a. Those applicants between the ages of 14 and 65 who are not requesting authorization to work will not be charged a fee for an application for employment authorization.

[76 FR 53791, Aug. 29, 2011]

## § 244.7 Filing the application.

(a) An application for Temporary Protected Status must be filed on the form designated by USCIS with any prescribed fees and in accordance with the form instructions.

(b) An application for Temporary Protected Status must be filed during the registration period established by DHS, except in the case of an alien described in § 244.2(f)(2).

(c) Each applicant must pay a fee, as determined at the time of the designation of the foreign state, except as provided in § 244.5(a).

(d) If the alien has a pending deportation or exclusion proceeding before the immigration judge or Board of Immigration Appeals at the time a foreign state is designated under section 244(b) of the Act, the alien shall be given written notice concerning Temporary Protected Status. Such alien shall have the opportunity to submit an application for Temporary Protected Status to the director under paragraph (a) of this section during the published reg-

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istration period unless the basis of the charging document, if established, would render the alien ineligible for Temporary Protected Status under § 244.3(c) or § 244.4. Eligibility for Temporary Protected Status in the latter instance shall be decided by the Executive Office for Immigration Review during such proceedings.

[63 FR 63596, Nov. 16, 1998, as amended at 74 FR 26940, June 5, 2009; 76 FR 53791, Aug. 29, 2011; 76 FR 73477, Nov. 29, 2011]

## § 244.8 Appearance.

The applicant may be required to appear in person before an immigration officer. The applicant may be required to present documentary evidence to establish his or her eligibility. The applicant may have a representative as defined in § 292.1 of this chapter present during any examination. Such representative shall not directly participate in the examination; however, such representative may consult with and provide advice to the applicant. The record of examination shall consist of the application, documents relating to the application, and the decision of the director.

[56 FR 619, Jan. 7, 1991, as amended at 56 FR 23497, May 22, 1991. Redesignated at 62 FR 10367, 10382, Mar. 6, 1997, as amended at 63 FR 63596, Nov. 16, 1998]

## § 244.9 Evidence.

(a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide